

Be it Resolved, That the Caucus Report of the Senate of the Forty-sixth Legislature be amended so as to provide that the pay of the Assistant Journal Clerk shall be Seven & 50/100 (\$7.50) Dollars per day and that this amendment shall be effective as of the first day of the session, January 10, 1939.

The resolution was read.

Senator Van Zandt moved to refer the resolution to the Committee on Finance.

Senator Stone of Washington moved to table the motion to refer, and the motion to table was lost.

Question recurring on the motion to refer, it prevailed.

#### Adjournment

On motion of Senator Burns, the Senate, at 12:00 o'clock m., adjourned until 10:00 o'clock a. m. next Monday, January 23, 1939.

#### Record of Votes

Senators Pace and Sulak asked to be recorded as voting "nay" on the motion to adjourn.

### EIGHTH DAY

(Monday, January 23, 1939)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalf	Winfield
Moffett	

A quorum was announced present.

The invocation was offered by the Chaplain.

On motion of Senator Van Zandt, and by unanimous consent, the reading of the Journal of the proceedings of Thursday, January 19, 1939, was dispensed with and the Journal was approved.

#### Report of Standing Committee

The following report of the Committee on State Affairs was submitted by Senator Weinert:

Committee Room,  
Austin, Texas, January 23, 1939.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. C. R. No. 6, Setting aside a suitable area on the south or other suitable entrance of the Capitol to accommodate not less than one hundred (100) automobiles of the members of the House of Representatives and Senate; and that twenty (20) additional spaces, or as many thereof as may be needed, be included for the accommodation of the newspaper correspondents,

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

WEINERT, Chairman.

#### Senate Bills on First Reading

The following bills were introduced, read severally first time, and referred to the committees indicated:

By Senators Metcalfe and Kelley:

S. B. No. 54, A bill to be entitled "An Act amending Article 2654 of the Revised Civil Statutes of 1925, as amended by Chapter 52, of the Acts of the Second Called Session of the Forty-first Legislature, by adding thereto a new article, to be known as Article 2654e, authorizing and directing the governing boards of the several institutions of collegiate rank, supported in whole or in part by public funds appropriated from the State Treasury, to except and exempt certain students from other nations of this continent from the payment of all dues, fees and charges; providing that the foregoing exemption shall

not be construed to apply to deposits, nor to fees or charges for lodging, board or clothing; requiring that applicants claiming the benefits of this exemption shall be bona fide students, duly certified to the heads of such institutions by the proper authorities from their native countries, and declaring an emergency."

Referred to Committee on Education.

By Senator Lanning:

S. B. No. 55, A bill to be entitled "An Act to amend Article 1055 of the Code of Criminal Procedure of Texas; and declaring an emergency."

Referred to Committee on Criminal Jurisprudence.

By Senator Van Zandt:

S. B. No. 56, A bill to be entitled "An Act defining public utilities, and providing for their regulation; creating the Public Utilities Commission of this State, providing for appointment of Commissioners, and fixing their qualifications and compensation, and prescribing their duties and powers, and the manner in which the jurisdiction herein conferred shall be exercised; providing penalties for the violation of this Act, and for the repeal of all laws and parts of laws in conflict herewith; and declaring an emergency."

Referred to Committee on State Affairs.

By Senator Van Zandt and Senator Small:

S. B. No. 57, A bill to be entitled "An Act amending Article 2237 of the Revised Statutes by dispensing with bills of exception to action on written motions, and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 58, A bill to be entitled "An Act amending Chapter 8, Title 42, of the Revised Statutes of 1925 by adding an article empowering the judge to change venue on his own motion; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 59, A bill to be entitled "An Act to preserve filed pleadings

by making just and convenient regulations to such end, repealing all conflicting laws, and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 60, A bill to be entitled "An Act to give further certainty to appellate jurisdiction by adding to Chapter 3 of Title 39 of the Revised Statutes, Article 1840b, providing for waiver and cure of objection as to the various notices and bonds required for its perfection, and for certiorari to complete the record; repealing conflicting law, except that this law shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 61, A bill to be entitled "An Act adding to subdivision 3 of Chapter 8 of Title 42 of the Revised Statutes an article to be numbered 2182a, providing that a motion for instructed verdict shall state the specific grounds therefor; repealing conflicting laws, except that this law shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 62, A bill to be entitled "An Act to amend Article 1856, Revised Civil Statutes of the State of Texas, so as to confine reversals of errors to substance and merit, by adding thereto certain provisos to the effect that the Courts of Civil Appeals shall not reverse a judgment for errors not calculated to cause and which probably did not cause rendition of an improper judgment, or probably prevented appellant from making a proper presentation of the case on appeal; and authorizing reversal only of part of matter in controversy where severable from other parts; and authorizing the appellate court to require the trial court to correct errors in certain cases; and authorizing allowance of amendments to pleadings in appellate court where this may be done without detriment to substantial rights of parties; and authorizing appellate court to ascer-

tain existence of an undisputed fact necessary to final disposition of the case and providing the procedure thereof; and providing that invalidity of a part of this Act shall not invalidate any other part; and repealing all laws and parts of laws in conflict therewith; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 63, A bill to be entitled "An Act adding to Subdivision 1, of Chapter 2, of Title 42 of the Revised Statutes an article to be numbered 2002a providing for waiver of defects, faults and omissions in pleading in certain cases; repealing conflicting law, except that this law shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 64, A bill to be entitled "An Act to add to Title 76 of the Revised Statutes, as Article 4660a, an article for the taxing of certain costs in favor of the party against whom a temporary injunction or restraining order is granted without notice and dissolved wholly or partly; repealing conflicting law, except that this law shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 65, A bill to be entitled "An Act adding to Subdivision 1 of Chapter 2 of Title 42 of the Revised Statutes an article to be numbered 2002b, forbidding reversal for variance or departure not specifically pointed out in stated manner in the trial court; repealing conflicting law, except that this law shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 66, A bill to be entitled "An Act to amend Article 27 of Title 1 of the Revised Statutes of 1925,

relating to the use of seals and scrolls and providing that hereafter the use of seals and scrolls shall be unnecessary in the case of individuals and of corporations; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 67, A bill to be entitled "An Act to amend Article 1322, Title 32, Chapter 3, of the Revised Civil Statutes of 1925, providing how corporations may convey land, and dispensing with the use of a seal or scroll in conveying lands; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 68, A bill to be entitled "An Act to amend Article 2199 of the Revised Statutes by adding thereto provision for reading from the court reporter's notes; repealing conflicting law; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 69, A bill to be entitled "An Act withdrawing from appearing party review in Court of Civil Appeals by means of writ of error; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 70, A bill to be entitled "An Act to amend Article 2007 of the Revised Statutes relating to plea of privilege by adding thereto a provision that such plea shall not be construed to embrace any of the matters set forth in Article 2010, Revised Statutes, unless specifically alleged in such plea; repealing conflicting law, except that this amendment shall apply in subsequently filed suits only; and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Van Zandt and Senator Small:

S. B. No. 71, A bill to be entitled "An Act conferring and relinquishing to the Supreme Court full rule-mak-

ing power in civil judicial proceedings, repealing all laws and parts of laws governing practice and procedure in civil actions, such repeal effective on and after January 1, 1940, providing that no substantive law or part thereof is thereby repealed; authorizing and empowering the Supreme Court by general order to continue such statutes in force as rules of the court; investing the Supreme Court with full rule-making power and fixing the time for such to become effective, and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Weinert:

S. B. No. 72, A bill to be entitled "An Act providing an open season for hunting wild quail in Guadalupe County; providing a penalty for killing any quail except during the open season herein provided; repealing all laws in conflict with this Act; and declaring an emergency."

Referred to Committee on Game and Fish.

By Senators Lemens, Metcalfe, Small, and Winfield:

S. B. No. 73, A bill to be entitled "An Act to amend the laws relating to local mutual aid associations by amending Chapter 274, Acts of the Regular Session of the 41st Legislature, Section 11, in order to better regulate groups or classes of members and their assessments and benefits; repealing Section 13 of said Act; amending Section 17 of said Act with regard to funds and revenues; amending Section 26 of said Act, as amended by Chapter 201, Acts of Regular Session of the 42nd Legislature, as to dissolution and forfeitures; repealing all laws in conflict herewith; and declaring an emergency."

Referred to Committee on Insurance.

By Senator Lemens and Senator Moore:

S. B. No. 74, A bill to be entitled "An Act regulating the practice of medicine, amending Articles 4500, 4501, 4503, 4504, 4505, 4506 and 4507 of Title 71, Chapter 6, Revised Civil Statutes of Texas, and adding Article 4500a thereto; and amending Articles 740 and 742 of Title 12, Chapter 6, of the Penal Code of Texas, and adding Article 742a thereto, as follows: Providing for the granting, refusal,

revocation, cancellation and suspension of licenses to practice medicine in this State; providing for the granting and refusing by the State Board of Medical Examiners of applications to take its examinations, and for judicial proceedings upon any such refusal; providing for the qualifications and attainments to be possessed by applicants for such examinations and licenses, the form and contents of such applications, and the examination of such applicants; providing definitions of certain terms used in this Act, including the terms 'reputable physicians' and 'reputable medical colleges'; providing that the State Board of Medical Examiners shall not, under Article 4500, as amended hereby, grant a license to practice medicine to any applicant whose authority to practice medicine in any other nation or country was granted by a nation or country in which a similar law in reference to granting licenses to practice medicine under reciprocal arrangement does not exist in favor of physicians of Texas; providing that the said Board be authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements; providing that those ministering or offering to minister to the sick or suffering through the application or use of the principles, tenets, or teachings of any church, by prayer, without the use of any drug or material remedy, shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets or teachings of the church of which they are bona fide members; providing that the provisions of this Chapter shall not apply to duly licensed chiropractors, who confine their practice strictly to chiropractic, as defined by statute; providing that these laws shall apply to all persons, other than licensed physicians, who sell, or offer to sell, on the streets, in other public places, or by going from house to house, within or outside of incorporated cities, towns and villages, remedies which they recommend as tonics, rejuvenators, female remedies, or remedies for any disease whatsoever; providing for judicial proceedings hereunder; amending Article 742 of the Penal Code of this State so as to provide that any person practicing medicine in Texas in violation of the preceding articles of Title 12, Chapter 6, of such Penal Code, shall be guilty of a misdemeanor, providing that each day of such violation

shall be a separate offense, and fixing the punishment therefor upon conviction; providing that any person not authorized by license to practice medicine, who publicly professes to be a physician or surgeon, and offers to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof, and who uses or assumes any title or appends to his name words or letters which represent, or may tend to represent, him as a physician, shall be guilty of a misdemeanor, making each day of such violation a separate offense, and fixing the punishment therefor upon conviction; providing for the partial invalidity hereof; repealing all laws in conflict herewith; and declaring an emergency."

Referred to Committee on Public Health.

By Senator Nelson:

S. B. No. 75, A bill to be entitled "An Act to regulate brokers who sell transportation or who make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for transportation, furnish information relative to such transportation, or introduce parties; to require such brokers to have a broker's license; defining certain terms; providing for the issuance, also the cancellation, of such license by the Railroad Commission of Texas; fixing the conditions under which such license may be issued; providing that the Railroad Commission may make reasonable rules and regulations applicable to all persons holding broker's license, providing for hearings; requiring a bond; providing for reviews of orders of the Commission; fixing a tax; providing penalties; and declaring an emergency."

Referred to Committee on Highways and Motor Traffic.

By Senator Brownlee:

S. B. No. 76, A bill to be entitled "An Act of the Legislature of the State of Texas making it unlawful to transport minnows beyond the limits of Williamson County that are taken from any water in Williamson County for the purpose of barter and sale and fixing the penalty and declaring an emergency."

Referred to Committee on Game and Fish.

By Senator Lanning:

S. B. No. 77, A bill to be entitled "An Act making an emergency appropriation to State Educational Institutions, designating the purpose for which said funds are to be used; providing that said funds are to be available immediately and declaring an emergency."

Referred to Committee on Finance.

By Senators Brownlee, Moffett, Martin, Winfield, Stone of Galveston, Graves, Head, Lemens, Metcalfe, Spears, Aikin, Kelley, Beck, and Moore:

S. B. No. 78, A bill to be entitled "An Act to create a Soldiers' and Sailors' Home in the State of Texas, providing that said home shall be operated in conjunction with the Confederate Home at Austin, Texas, and placing the operation thereof under the supervision of the State Board of Control; providing that inmates may be discharged for admission procured by fraud or misrepresentation and determining eligibility for admission; providing for deposit of pensions or other compensation received from the United States Government with Superintendent and determining expenditure thereof, and providing that wife of ex-service man may be admitted to residence, and where wife of ex-service man is admitted, then such pension or compensation received shall be deposited with superintendent under rules and regulations promulgated by the State Board of Control for expenditure for her benefit, and providing further for the care and maintenance of inmates, and in the event of death of ex-service man, his widow may be transferred to Confederate Woman's Home at Austin, Texas, if she so desires or may remain in said Soldiers' and Sailors' Home, and providing that the Board of Control is authorized to receive donations in aid of such home, and that Superintendent of Confederate Home shall also act as Superintendent of Soldiers' and Sailors' Home, and providing that wherever practical ex-service men, their wives or dependents, shall be employed in the operation of said Home, and providing that Board of Control may negotiate with the Federal Government for aid and assistance in support thereof and declaring an emergency."

Referred to Committee on State Affairs.

**Senate Resolution 15**

Senator Moffett offered the following resolution:

Whereas, The present record breaking surplus of cotton plainly presents an economic problem of far-reaching magnitude; and

Whereas, The increased and expanded consumption of cotton presents the only real solution to the above mentioned problem; and

Whereas, Public opinion is gradually coming to the realization that increased and expanded consumption of the South's principal farm product is the only thing that will finally and ultimately bring enduring prosperity to the Southern States; and

Whereas, There is being held in Dallas, Texas, on Tuesday, January 24, 1939, a meeting to effect the permanent organization of the National Cotton Council of America, an organization composed of and to be composed of cotton growers, cotton ginners, warehousemen, shippers, and others directly connected with the cotton industry and said organization is to be South-wide in scope; and

Whereas, The purposes and objectives of said Council is to increase cotton consumption by any possible legitimate means, including increased usage of cotton in road construction, in the manufacturing of paper, in chemical industries, involving chemical processes and products wherein cotton, which contains the purest known form of cellulose, may prove to be a valuable and necessary component part, and

Whereas, Said Council expects to use strong and well directed efforts to bring public opinion around to the viewpoint that the people of the United States must recognize the gravity of the South's cotton problem, and thereby increase the usage of cotton in various channels, each of which by itself might be the means of using only a small volume, but which collectively might increase the usage in America as much as three billion bales per annum, thereby bringing about at least some definite relief from the present stagnation of consumption of the South's principal product; now therefore be it

Resolved, That the State Senate of Texas hereby endorses the efforts of the National Cotton Council of America not only because of the scope of

the work which they are undertaking, but also because the membership and leadership of said Council embraces some of the best thinkers in the Southern States, who are giving their time and energy to this organization because of the gravity of the cotton problem; and be it further

Resolved, That a copy of this resolution be mailed to Mr. Oscar Johnston, at Dallas, Texas, and by him to be presented to said organization.

The resolution was read.

Senator Moffett moved that the constitutional rule relative to the consideration of resolutions and bills during the earlier days of the Regular Session of the Legislature be suspended and that S. R. No. 15 be taken up and considered at this time.

The motion prevailed by the following vote:

Yeas—29

Aikin	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Isbell	of Galveston
Kelley	Stone
Lanning	of Washington
Lemens	Sulak
Martin	Van Zandt
Metcalf	Weinert
Moffett	Winfield
Moore	

Absent—Excused

Beck Hill

The President laid the resolution before the Senate.

Senator Martin offered the following amendment to the resolution:

Amend S. R. No. 15 by adding after the word "America" and before the word "not" in the 7th paragraph of said resolution the following words: "in so far as they cover the above enumerated purposes."

The amendment was adopted.

The resolution as amended was then adopted.

**Bill and Resolution Signed**

The President signed in the presence of the Senate, after giving due

notice thereof, the following enrolled bill and resolution:

H. B. No. 2, A bill to be entitled "An Act amending Article 1901 of the Revised Civil Statutes of 1925 pertaining to the custody and care of records, excepting certain counties, and providing specific provisions for the removal of records under certain conditions, and providing an emergency."

H. C. R. No. 12, Authorizing the Speaker of the House to appoint three Members of the House and the President of the Senate to appoint three Members of the Senate to select some worthy person as poet laureate.

#### Senate Resolution 16

Senator Collie offered the following resolution:

Be It Resolved by the Senate of the State of Texas, That the general rules of the Senate, numbers 1 to 101, inclusive, of the Forty-fifth Legislature, as shown on pages 247 to 305, inclusive, of the Texas Legislative Manual, 1937, with the following amendments be adopted as the permanent rules of the Texas Senate and the Forty-sixth Legislature.

99-b. If a motion to report a bill or resolution favorably does not receive a majority vote, the bill or resolution shall be dead. Likewise, if a motion to report a bill or resolution unfavorably receives a majority vote, the same shall be dead. When a bill or resolution has been killed by the committee, a favorable minority report may be made, provided notice thereof is given by two members of the committee, (if the committee is composed of ten or less and three members if composed of more than ten), present at the time the bill is killed and who voted on the minority side; this report must be in writing and signed by the members giving notice, and must be filed with the Senate within two calendar days from the time such action was taken by the committee (Sundays and days the Senate is not in session excepted). Unless one of the members signing the minority report or the sponsor of the bill makes a motion in the Senate to have the same substituted for the majority report within ten calendar days (Sundays and days the Senate is not in session excepted) from the time said minority report was filed

with the Senate, said bill or resolution shall be dead and shall not be again considered during the session. It shall take the affirmative vote of a majority of the Members of the Senate, present when voting, to substitute a minority report for the majority report.

If a committee substitute is adopted by the committee for the pending bill or resolution, and such substitute receives a favorable report, the same shall be reported back to the Senate in lieu of the original bill or resolution. The original bill or resolution, for which the substitute was adopted, shall be dead unless reported to the Senate and handled under the same procedure as herein provided for minority reports. The substitute, when reported back to the Senate, shall take the same procedure as an original bill or resolution, and no action shall be required on the part of the Senate to confirm the substitution made by the committee. Provided, that any motion to substitute the minority for the majority report, shall be privileged.

The rules which have heretofore been repealed by Act of the Senate in the Forty-fifth Legislature shall be eliminated and the sections are to be renumbered accordingly.

The resolution was read and was referred to the Committee on Rules.

#### Messages from the Governor

The President laid before the Senate, and had read, the following message from the Governor:

Austin, Texas,  
January 23, 1939.

To the Senate of the Forty-sixth Legislature.

I ask the advice, consent and confirmation of the Senate to the following appointments:

To be Chairman of the State Highway Commission (term beginning February 15, 1939):

Carr P. Collins of Dallas County.

To be State Labor Commissioner (term beginning February 1, 1939):

Joe Kunschik of Travis County.

Respectfully submitted,  
W. LEE O'DANIEL,  
Governor of Texas.

The message was referred to the Committee on Nominations of the Governor.

The President laid before the Senate, and had read, the following message from the Governor:

To the Members of the Forty-sixth Legislature:

I am a newcomer in the field of governmental affairs, all my experience having been that of a business man, but to my way of thinking, it is nonsense to talk about the people controlling the Government if the people do not control the expenditure of the money. And certainly they cannot control the expenditure of the money if they do not know what it is spent for. I am old-fashioned enough to believe that the duties of the Legislature, the duties of the Governor, and the duties of the judges of our courts are pretty well defined in the Texas Constitution. And I think it is the job of the Legislature to determine specifically and definitely what the taxpayers' money is going to be spent for. I do not believe in the Legislature turning its control of the public purse over to the Governor or any of the heads of the administrative departments of the State. I believe it is the responsibility of the Legislature to determine what the taxpayers' money is going to be spent for and then it is the business of the Governor to stay on the job and see that it is not spent for any other purpose. And, as I see it, these things can be accomplished only by proper budgeting and proper auditing. So far as I am concerned, I want all the auditing of my department and the departments of my appointees done by an auditor selected by the Legislature. I have no desire as the Chief Executive of this State to select an auditor to audit my own appointees.

It is my hope that we may be able, through the passage of legislation which I am recommending in this message and other legislation which I shall submit to you from time to time, to establish a business-like control of the taxpayers' money in this State, to the end that we may be able to give to the taxpayers not only assurance that the money has been honestly spent but also that it has been efficiently spent.

In my judgment it is very important that we have in this State a strong budget law to cover the expenditures not only of the State Government but also of all local units of

government, and I think it is equally important that we provide for an efficient method of auditing public expenditures of the State. To accomplish these purposes it will be necessary to amend the law creating the office of State Auditor and to amend the State budget law.

The Constitution places the responsibility upon the Legislature to raise taxes and appropriate money to run the State Government. We are now spending in Texas about \$280,000,000 or \$300,000,000 each biennium, but of this amount only approximately \$70,000,000 is expended in response to itemized legislative appropriation bills. The other money is expended based on a broad grant of power from the Legislature. I think all will agree that when the Legislature make appropriations of the taxpayers' money, whether it makes the appropriation by an itemized bill or by a broad grant of power, that it is the responsibility of the next session of the Legislature to check up and find out whether or not the executive and administrative departments of Government have expended this money as the Legislature directed, and it should be the job of the State Auditor to do this.

But as the matter now stands, the State Auditor is not selected by the Legislature and has no direct responsibility to the Legislature. As the law stands, the Governor appoints the heads of most of the large spending departments of the State Government and then he appoints an auditor to audit his own appointees. Such a system would not be tolerated for a minute in any sound business organization and I for one, as the Chief Executive of this State, should like to see this law changed. I should like to see the Auditor selected by a legislative committee and made directly responsible to the Legislature for the performance of his duties. I do not even believe that appropriations for the Auditor's office should appear in the Governor's budget which he submits to the Legislature. I think it should be left entirely to the Legislature to select the State Auditor, provide him with the necessary facilities to do his work, and have him directly responsible to them. So far as I am concerned, I do not want to name an auditor to audit my own acts.



I, therefore, submit to the Legislature as emergency legislation for your immediate consideration, the matter of amending the law creating the office of State Auditor in such manner as the Legislature may deem advisable to the end that this office may function more efficiently. May I now invite the attention of the Legislature to the necessity for amending the present State Uniform Budget Law.

When it comes to amending the budget law of the State, I think we should realize that all good budget procedure would place on the Governor the responsibility of the preparation of the budget to cover the expenditures of this State. When a man is a candidate for Governor and he makes certain promises to the people with reference to his belief as to how public funds should be expended, the budget law should require the Governor once he is elected to state in plain, unequivocal terms how he believes the promises which he has made to the people can be carried out, and the budget is the proper vehicle in which this record should be made.

It is, of course, obvious that if this is to be done that the machinery must be created to enable the Governor to perform this service. He cannot personally do this work. I, therefore, recommend that the budget law be amended so as to create the office of Director of the Budget, providing this office with adequate assistants and making the Director of the Budget appointive by the Governor and subject to removal by the Governor at will, and then place the responsibility upon the Governor to present each biennial session of the Legislature a complete budget and complete budget bills.

I believe it is just as essential for the budget department to be absolutely under the direction of the Governor's office as it is for the Auditor's office to be absolutely under the direction of the legislative branch of the Government. Any attempt of the Governor to interfere with the operation of or to have anything to do with the selection of the State Auditor is, to my way of thinking, unsound. Likewise I believe it would be unsound in principle to not leave full freedom to the Governor in the selection of his Director of the Budget, because after all the Director

of the Budget is simply an agent of the Governor, performing a duty for the Governor that the Governor does not have time to perform, and the Governor is responsible for the Director of the Budget's acts. When the budget goes to the Legislature, it is not the budget of the Director of the Budget, but it is that of the Governor.

At the present time we have what I regard as an impossible situation: The Board of Control is charged with the responsibility of preparing the budget. This is subject to two criticisms and in making these criticisms I am in no sense talking about the personnel who compose the Board of Control. The first definite criticism is that the preparation of a budget is not a proper task for an administrative board. It is a task for an executive and is so recognized by all sound budget authorities. The second criticism is that as now constituted, the Board of Control is responsible for spending approximately fifty-seven million dollars of State and Federal funds each biennium. Certainly the department of government responsible for one of the large spending agencies is not a proper authority to prepare a budget.

If we can so amend the State Budget Law as to create a strong State Budget Department, it will, in my judgment, in years to come, reflect itself in millions of dollars of savings to the taxpayers of this State and will at the same time improve governmental service. Likewise, if we can amend the law so as to put the function of post-auditing under the direct control of the Legislature where it belongs, thereby giving to the Legislature a continuing agency to constantly report to them at each session of the Legislature whether or not the laws of this State are being properly administered by the executive and administrative departments of the Government, we will, in my judgment, have taken a long step in the direction of getting the State Government organized on a basis of efficiency and we will be taking a step which, I think, will tend to re-establish the confidence of the people in the various agencies of the State Government.

I should like now to further invite your attention to what I regard as necessary amendments to the State Budget Law as it affects the local

units of government in this State. The general model of the Texas Uniform Budget Law and its general plan of handling the budget affairs of local units of government is good. I have talked with many people who have made a study of the budget procedure of local units of government in Texas and of the functioning of the present budget law and I am impressed with the fact that we have a good law as it applies to local units of government. The trouble seems to be in the evasions of law. Apparently, many counties in Texas are almost totally ignoring some of the plain provisions of this law and from the information brought to me this seems to be true of many of our cities and school districts.

I think it important that this law be so amended as to eliminate these abuses. Apparently, most of the evasions of the budget law come from or are based upon that clause of the law which after the regular budget has been adopted and approved permits governing boards of cities and counties to adopt supplemental budgets in cases of emergency. Apparently, this emergency clause is being seriously abused. And I most respectfully call the attention of the Legislature to what I regard as a necessity for re-writing this section of the budget law as it applies to local units of government, in such manner as will bring about a more uniform enforcement.

It is important for us to remember that local units of government in Texas are now collecting \$114,000,000 (millions) each year. They have an outstanding debt of \$658,000,000 (millions) and this is all a tax load upon the ad valorem taxpayers of this State. Last year these local units of government in Texas collected \$114,000,000 (millions) in taxes, while \$20,000,000 (millions) of the taxes levied for that year went delinquent. These local units of government now have over \$115,000,000 (millions) of accumulated delinquent taxes. Now in view of all these facts, I deem it tremendously important that the State, through legislation, demand a strict compliance with the Budget Law. I think the State Budget Law should invalidate any tax levy which is not based upon a legally adopted budget.

I call the attention of the Legislature to another matter which I think is important and, that is, to make

it mandatory in the budget law that all of these budgets be prepared on forms approved by the Comptroller of Public Accounts of this State. Probably, the authority should be broad enough so as to allow the Comptroller to provide different types of forms for the larger counties from those used in the smaller counties, but there should be uniformity in these budgets in counties of similar size throughout the State. If they are not uniform, then it becomes practically impossible for the taxpayer to compare the efficiency of the service he is receiving in his county with that being rendered in some other county, and the taxpayer is entitled to have an opportunity to do this. There is no good reason why counties of similar size should not use the same type of budget forms because the taxpayers of one county are entitled to the opportunity to compare operating costs with other similar counties.

It is my hope that we, as public officials, can succeed in establishing a more definite control of the spending of the taxpayers' money in this State. And while correct budgeting and correct auditing are not all that we must give attention to, to accomplish this purpose, certainly these are two of the bedrocks upon which any intelligent system of handling public funds must be based.

After all there is nothing complex about the proposition of requiring correct budgeting and regular and continuous auditing, all lines of business have long since done it, both are absolutely essential to the orderly functioning of any line of business. There is nothing unreasonable when the taxpayers are going to be called upon to put up three or four million dollars to carry on the affairs of a county, to require the commissioners' court before they levy the taxes, to work out a definite plan showing exactly how they expect to spend the money. There is nothing unreasonable when they have worked out this plan, to require them to notify the taxpayers of the community and allow them to come in and express their opinion about it. And there is nothing unreasonable about requiring in the law that once the commissioners' court has worked out this plan and has adopted a budget to control the expenditures for a one-year period, to demand that the court abide by this budget and that they not spend

money for any other purpose without providing for it in an orderly way. And, of course, all that we have said about a commissioners' court applies with equal force to any other local unit of government spending the taxpayers' money, as well as to the State, the major unit.

May I urge as my very definite opinion the desirability of the Legislature considering the amendment of the State Budget Law and the amendment of the law providing for the State Auditor as one relates to the other. As I see it, the State Auditor should have nothing whatever to do with the current auditing. Any business organization representing a Four Billion Dollar Corporation, and if you will capitalize at a reasonable rate the expenditures of the State Government that is what the State Government represents, the Board of Directors would each year employ an accountant who would go through and audit every transaction that had taken place during the year and report to the board whether or not the company had been operated in accordance with the policies laid down by the Board of Directors, whether or not the money had been honestly spent, and whether or not it had been efficiently spent. And that is the job which the State Auditor would do for the Board of Directors of the State of Texas, who, of course, is the Legislature.

If the State Auditor performs this duty, if he performs it efficiently, it will yield to the State in years to come a tremendous return in the form of economies which these audits will bring to the attention of each session of the Legislature. But if the job is to be well done, I think it absolutely essential that the work of the State Auditor be confined exclusively to the field of post-auditing and that he be responsible to the Legislature and no one else.

Now on the other hand, current auditing is an administrator or executive responsibility and I think the current auditing functions should be centralized, as nearly as is feasible, under the executive department of Government through the Director of the budget. I do not recommend giving the Director of the Budget the power to name all of the auditors in the various departments of the State Government, but I do recommend

giving him the power to investigate and to coordinate the current auditing of public funds.

I hope the Legislature will concur in my judgment that it is desirable to take action on these two fundamental pieces of legislation with the least delay consistent with deliberate consideration, because I believe that they represent the bedrock on which we must build a re-organization of the method of handling State finance. I shall submit to you at a later date my suggestions concerning what can be done and what I think should be done to bring about the elimination of many useless special funds and the consolidation of these funds, thereby making it possible for the Legislature to have a more definite control over public expenditures than is possible under conditions which we are now operating. But I deem this is to be a separate and distinct question which should not be a part of the measures which I am today recommending to you for emergency consideration, amending the State Budget Law and the State Auditor's Law which are submitted as emergency legislation and for your immediate consideration.

Respectfully submitted,  
W. LEE O'DANIEL,  
Governor of Texas.

#### Senate Resolution 17

Senator Metcalfe, by unanimous consent, offered at this time the following resolution:

Whereas, Texas is the leading wool and mohair producing State in this Country; and

Whereas, The National Wool Growers' Association, an organization composed of actual producers and growers of these products, has honored Texas by holding its annual convention in this State in the City of San Angelo beginning Tuesday, January 24th; now, therefore, be it

Resolved by the Senate of Texas That we extend a welcome upon the part of this body to the members of the National Wool Growers Association at their annual convention in San Angelo this week.

The resolution was read; and on motion of Senator Metcalfe and by unanimous consent, it was considered at this time and was adopted.

**House Concurrent Resolution 6**

The President laid before the Senate for consideration at this time:

H. C. R. No. 6, To provide parking space for cars of Members of the Legislature and newspaper correspondents.

The resolution was read and was adopted.

**Record of Votes**

Senators Hill, Brownlee, Aikin, Metcalfe, Burns and Lemens asked to be recorded as voting "nay" on the adoption of the resolution.

**Suspension of Constitutional Rule**

Senator Weinert moved that the constitutional rule relative to the consideration of bills during the earlier days of the Regular Session of the Legislature be suspended to permit the prompt consideration of S. B. No. 72 in Committee and by the Senate.

The motion prevailed by the following vote:

**Yeas—31**

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

**Report on Senate Bill 72**

Senator Weinert, by unanimous consent, submitted at this time the following report of the Committee on Game and Fish:

Austin, Texas,  
January 23, 1939.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred

S. B. No. 72, A bill to be entitled "An Act providing an open season for hunting wild quail in Guadalupe County; providing a penalty for killing any quail except during the open season herein provided; repealing all laws in conflict with this Act, and declaring an emergency,"

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

MOORE, Chairman.

**Senate Bill 72 on Second Reading**

Senator Weinert moved that the constitutional rule requiring bills to be read on three several days be suspended and that S. B. No. 72 be placed on its second reading and passage to engrossment and on its third reading and final passage.

The motion prevailed by the following vote:

**Yeas—31**

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

On motion of Senator Weinert and by unanimous consent, Senate Rule 48 was suspended to permit consideration of the bill at this time.

The President laid the bill before the Senate, it was read second time and was passed to engrossment.

**Senate Bill 72 on Third Reading**

The President then laid S. B. No. 72 before the Senate, on its third reading and final passage.

The bill was read third time and was passed.

**Senate Bill 25 on Second Reading**

The President laid before the Senate, on its second reading and passage to engrossment:

S. B. No. 25, A bill to be entitled "An Act authorizing the refunding of Texas relief bonds, first series, prescribing the duties and authority of the Texas Bond Commission in connection with the calling and refunding of said bonds at a lower rate of interest, prescribing the terms and conditions for the issuance and payment of said refunding bonds, providing that Section 5 of Chapter 37, Acts of the First Called Session of the Forty-third Legislature, shall not apply to said refunding bonds, making an appropriation for the payment of principal and interest of said refunding bonds for the biennium ending August 31, 1941, and declaring an emergency."

The bill was read second time and was passed to engrossment.

**Senate Bill 25 on Third Reading**

Senator Moffett moved that the constitutional rule requiring bills to be read on three several days be suspended and that S. B. No. 25 be placed on its third reading and final passage.

The motion prevailed by the following vote:

**Yeas—31**

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

The President laid the bill before the Senate, on its third reading and final passage.

The bill was read third time and was passed by the following vote:

**Yeas—31**

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

**Senate Bills on First Reading**

By unanimous consent, the following bills were introduced at this time, read severally, and referred to the committees indicated:

By Senator Spears:

S. B. No. 79, A bill to be entitled "An Act amending Article 4100, Title 68, of the Revised Civil Statutes of the State of Texas; providing a maximum amount allowable as compensation to a garnishee; making this Act and amendment of said Article 4100 applicable to pending as well as future suits and proceedings; and, declaring an emergency."

Referred to Committee on Civil Jurisprudence.

By Senator Spears:

S. B. No. 80, A bill to be entitled "An Act amending H. B. No. 309, being Chapter 53, page 101 of the Acts of the Thirty-eighth Legislature, Regular Session (1927) as amended by S. B. No. 520, being Chapter 210, page 499 of the Acts of the Forty-fourth Legislature, Regular Session (1935), and subdivisions 37, 45, 57, and 73 of Article 199, Title 8, Revised Civil Statutes of 1925 as amended, fixing the terms and prescribing the jurisdiction of the District Courts of the 37th, 45th, 57th, and 73rd Judicial Districts, providing for the administration of the business of said Courts, providing for the election of special judges in case of absence, sickness or inability of the regular judges to act and preside in the Civil District Courts of Bexar County, Texas, fixing the effective date of the Act and the date of the expiration of the terms of court then in session, repealing all

laws and parts of laws in conflict herewith, and declaring an emergency."

Referred to Committee on Civil Jurisprudence.

#### Additional Signer of Senate Bill 22

On motion of Senator Van Zandt and by unanimous consent, the name of Senator Metcalfe was added to S. B. No. 22, as a signer thereof.

#### Suspension of Constitutional Rule

Senator Cotten moved that the constitutional rule relative to the consideration of bills during the earlier days of the Regular Session of the Legislature be suspended and that S. B. No. 27 be considered promptly in the Committee to which it has been referred.

The motion prevailed by the following vote:

Yeas—31

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

#### Adjournment

On motion of Senator Isbell, the Senate, at 11:25 o'clock a. m., adjourned until 10:00 o'clock a. m. tomorrow.

#### NINTH DAY

(Tuesday, January 24, 1939)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Moore
Beck	Nelson
Brownlee	Pace
Burns	Redditt
Collie	Roberts
Cotten	Shivers
Graves	Small
Hardin	Spears
Head	Stone
Hill	of Galveston
Isbell	Stone
Kelley	of Washington
Lanning	Sulak
Lemens	Van Zandt
Martin	Weinert
Metcalfe	Winfield
Moffett	

A quorum was announced present.

The invocation was offered by the Chaplain.

On motion of Senator Hill and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

#### Petitions and Memorials

Senator Isbell presented a communication from Hon. C. E. Perry, Mayor of Wolfe City, Texas, relating to establishment of vocational school for negroes in Fannin County, which was read to the Senate.

#### Senate Bills on First Reading

The following bills were introduced, read severally first time, and referred to the committees indicated:

By Senator Stone of Galveston:

S. B. No. 81, A bill to be entitled "An Act making an appropriation to the State Health Department to be used for the purpose of assisting in the eradication of pneumonia in the State and for carrying on a pneumonia typing control program, and declaring an emergency."

Referred to Committee on Finance.

By Senator Spears:

S. B. No. 82, A bill to be entitled "An Act authorizing certain cities to issue municipal bonds to fund the deficit in the wages of firemen and policemen of said cities; repealing all laws in conflict herewith, and declaring an emergency."

Referred to Committee on Towns and City Corporations.